

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

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7 Attorneys for Petitioner
Marcy Simon

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10 UNITED STATES DISTRICT COURT
11
12 NORTHERN DISTRICT OF CALIFORNIA
13
14 SAN FRANCISCO DIVISION

15 MARCY SIMON, an individual residing in New
16 York,

17 Petitioner,
18 v.
19

20 MAPLE BEACH VENTURES, LLC, a Nevada
21 limited liability company; MAPLE BEACH
22 VENTURES ONE, LLC, a Wyoming limited
23 liability company; and MAPLE BEACH
24 VENTURES ONE, LLC, a Delaware limited
25 liability company;

26 Respondents.

27 CASE NO.: 3:21-mc-80013

28
**PETITIONER MARCY SIMON'S NOTICE
OF PETITION AND PETITION TO
CONFIRM ARBITRATION AWARD AND
FOR ENTRY OF JUDGMENT**

[9 U.S.C. § 9 (Federal Arbitration Act)]

*Declaration of Kerry Garvis Wright
submitted concurrently herewith*

DATE: TBD
TIME: TBD
COURTROOM: TBD

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED
NOTICE OF PETITION AND PETITION

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on _____, 2021, at _____ a.m./p.m. in
 3 Courtroom _____ of the United States District Court for the Northern District of California,
 4 Petitioner Marcy Simon (“Petitioner” or “Ms. Simon”) will petition the Court, under the Federal
 5 Arbitration Act (“FAA”), 9 U.S.C. § 1 *et seq.*, for an order [REDACTED]

6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED] and for entry of judgment thereon.

13 This petition is based upon this Notice; the accompanying Memorandum of Points and
 14 Authorities; the Declaration of Kerry Garvis Wright and all exhibits thereto; any matters of which
 15 the Court may take judicial notice; and such other evidence and argument as may be presented on
 16 this petition.

17 **RELIEF SOUGHT**

18 Ms. Simon seeks an order from this Court (i) confirming the Final Award, (ii) entering
 19 judgment in accordance with the Final Award, and (iii) awarding Ms. Simon her attorney’s fees and
 20 expenses incurred in connection with the enforcement of the judgment.

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **I. Introduction**

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 24 [REDACTED]
 25 [REDACTED]
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18 II. Factual Background
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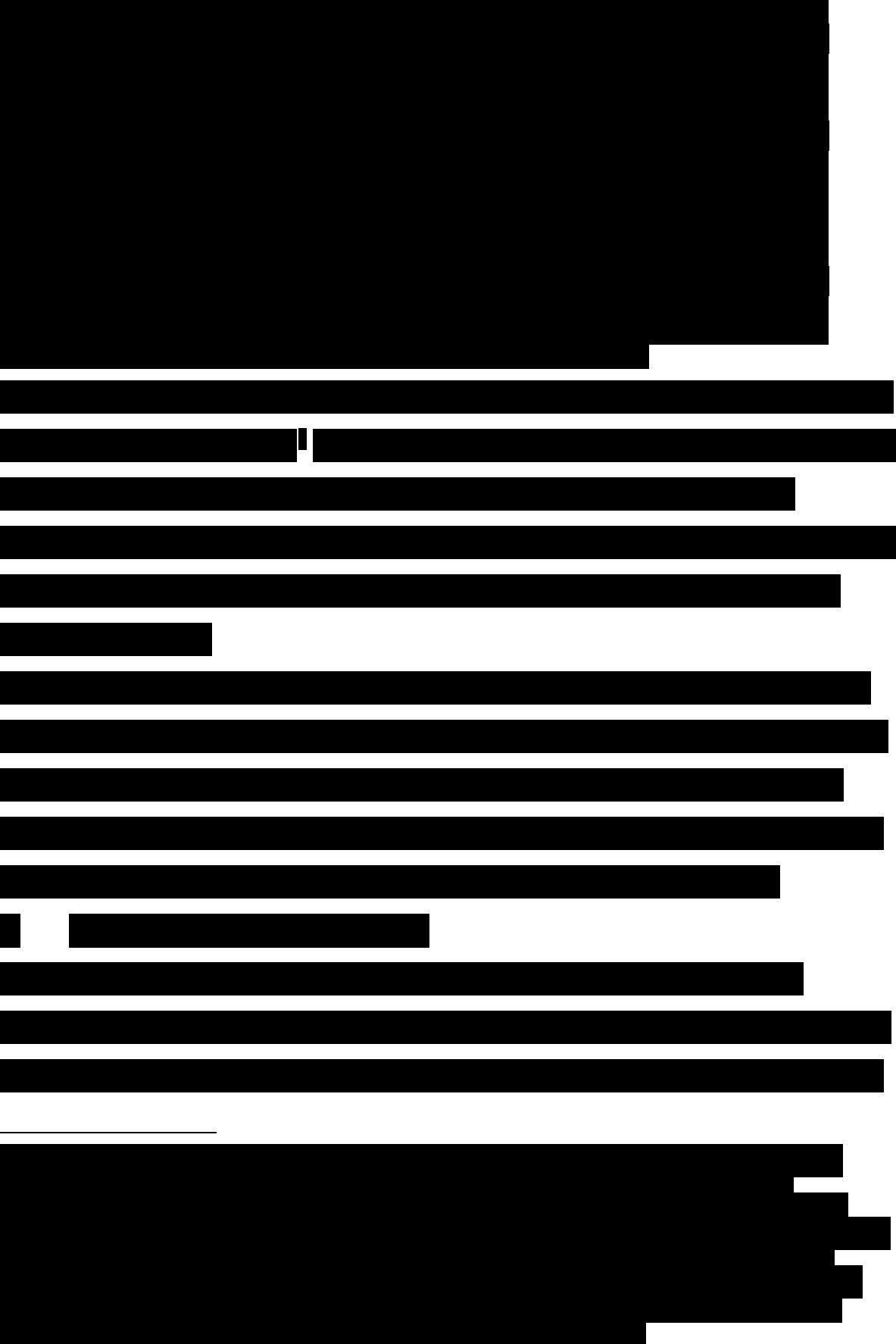
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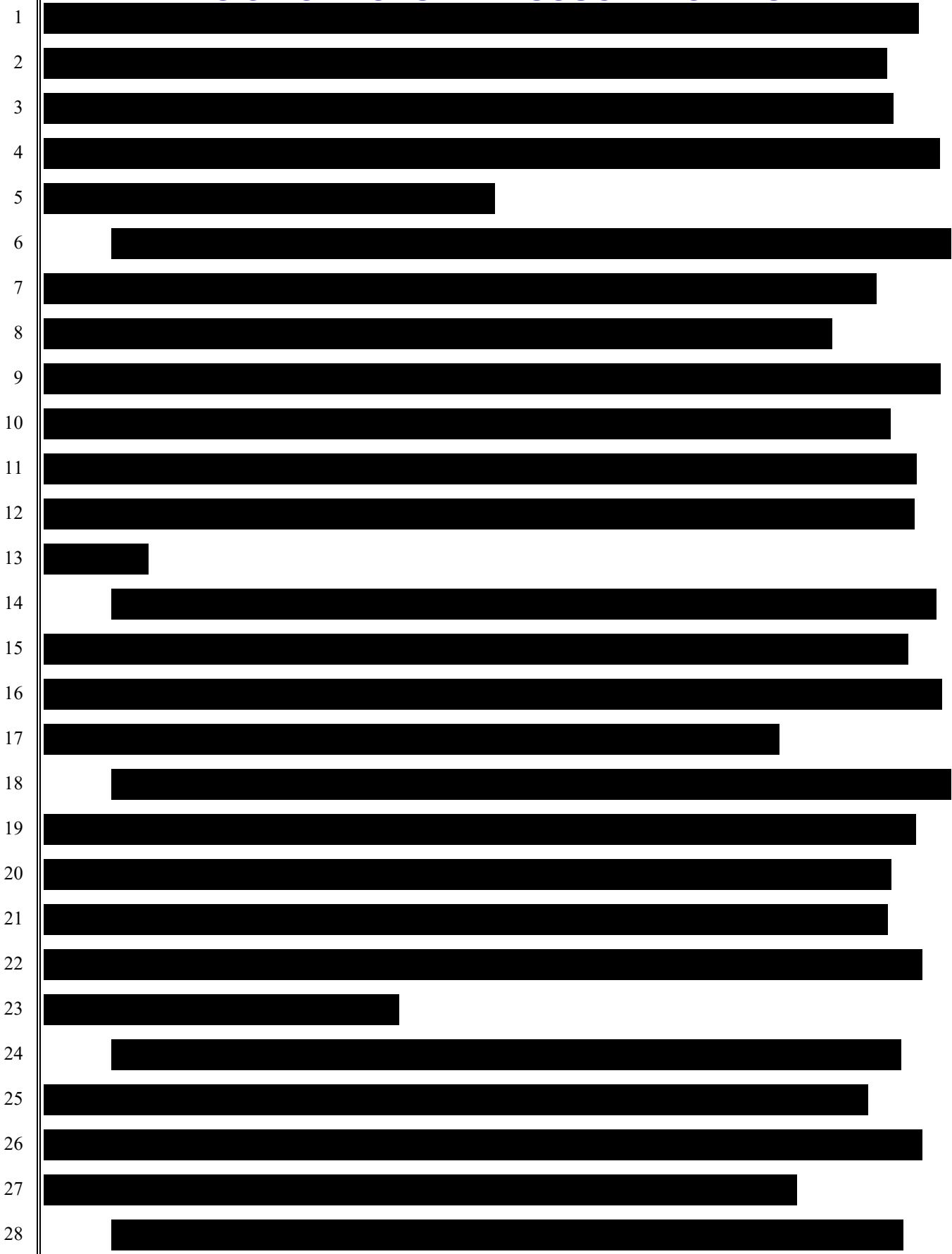
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IV. Argument

16 The FAA provides that a party may apply to the court for an order confirming an arbitration
 17 award if the parties' agreement provides that a court judgment is to be entered upon the award. 9
 18 U.S.C. § 9. As stressed by the Ninth Circuit on numerous occasions, judicial review of an arbitration
 19 award "is both limited and highly deferential." *Coutee v. Barrington Capital Grp., L.P.*, 336 F.3d
 20 1128, 1132 (9th Cir. 2003) (citing *Sheet Metal Workers' Int'l Ass'n v. Madison Indus., Inc.*, 84 F.3d
 21 1186, 1190 (9th Cir. 1996). [REDACTED]
 22 [REDACTED]
 23 [REDACTED]

24 [REDACTED] The FAA provides
 25 that "the court **must** grant such an order unless the award is vacated, modified, or corrected as
 26 prescribed in [9 U.S.C.] sections 10 and 11." 9 U.S.C. § 9 (emphasis added); *see also Hall Street*
 27 *Assocs. v. Mattel, Inc.*, 552 U.S. 576, 587 (2008) ("There is nothing malleable about 'must grant,'"
 28 which unequivocally tells courts to grant confirmation in all cases, except when one of the

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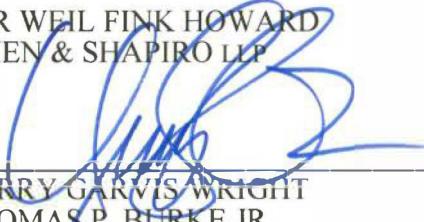
1 ‘prescribed’ exceptions applies”); *Bosworth v. Cubicon Corp.*, 2016 WL 4088879, at *1 (N.D. Cal.
 2 Aug. 2, 2016) (Alsup, J.) (“A district court *must* confirm an arbitration award unless it is vacated
 3 pursuant to Section 10 or modified pursuant to Section 11”) (emphasis in original).

4 The grounds for vacating or correcting an arbitration award under Sections 10 and 11 are
 5 limited to: (1) fraud in the procurement of the agreement; (2) arbitrator corruption; (3) arbitrator
 6 misconduct or exceeding of powers; and (4) corrections for material miscalculations, exceeding of
 7 powers, or imperfection of form. *G.C. & K.B. Investments, Inc. v. Wilson*, 326 F.3d 1096, 1104 (9th
 8 Cir. 2003). As Section 10 provides the exclusive grounds for vacatur of an arbitration award, a party
 9 seeking vacatur “must clear a high hurdle.” *Smith v. VMware, Inc.*, 2018 WL 3744472, *1 (N.D.
 10 Cal. Aug. 7, 2018) (Gilliam, J.) (quoting *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S.
 11 662, 671 (2010)).

12 Thus, “[c]onfirmation is a summary proceeding that converts a final arbitration award into a
 13 judgment of the court.” *K&M Installation, Inc. v. United Brotherhood of Carpenters, Local 405*,
 14 2016 WL 1559712, at *2 (N.D. Cal. Apr. 18, 2016) (James, M.J.) (quoting *Ministry of Def. &*
 15 *Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Defense Sys., Inc.*, 665 F.3d
 16 1091, 1094 n.1 (9th Cir. 2011)). Because the exceptions to confirmation are so limited, “review of
 17 the award itself is ‘both limited and highly deferential’ and an arbitration award may be vacated
 18 only if it is ‘completely irrational’ or ‘constitutes manifest disregard of the law.’” *PowerAgent Inc.*
 19 *v. Electronic Data Sys. Corp.*, 358 F.3d 1187, 1193 (9th Cir. 2004) (quoting *Coulee*, 336 F.3d at
 20 1132-33; *see also Hall Street*, 552 U.S. at 588 (“Instead of fighting the text, it makes more sense to
 21 see the three provisions, §§ 9-11, as substantiating a national policy favoring arbitration with just the
 22 limited review needed to maintain arbitration’s essential virtue of resolving disputes straightaway”);
 23 *K&M Installation*, 2016 WL 1559712 at *2-3. Under that standard, “confirmation is required even
 24 in the face of erroneous findings of fact or misinterpretations of law.” *Kyocera Corp. v. Prudential-*
 25 *Bache Trade Servs., Inc.*, 341 F.3d 987, 997 (9th Cir. 2003) (quoting *French v. Merrill Lynch,*
 26 *Pierce, Fenner & Smith, Inc.*, 784 F.2d 902, 906 (9th Cir. 1986) (internal quotations omitted). A
 27 showing of error—“or even a serious error”—is insufficient to set aside an arbitration award. *Stolt-*
 28 *Nielsen*, 559 U.S. at 671.

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6 V. **Conclusion**
7 [REDACTED]
8 [REDACTED]
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10 [REDACTED]
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12 DATED: January 19, 2021

13 GLASER WEIL FINK HOWARD
14 AVCHEN & SHAPIRO LLP
15 
16 By: KERRY GARVIS WRIGHT
17 THOMAS P. BURKE JR.
18 Attorneys for Petitioner
19 Marcy Simon
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